Pengurus Kawasan, Selia Selenggara Selatan Sdn Bhd & Anor v Iqmal Izzuddeen bin Mohd Rosthy & Ors and another appeal

HIGH COURT (SEREMBAN) — APPEAL NOS NA-12B-9–04 OF 2022 AND NA-12B-10–04 OF 2022
AZIZUL AZMI ADNAN J
25 MAY 2023

Tort — Negligence — Personal injuries — Appeal against finding of liability and quantum of damages — Tree fell on plaintiff when plaintiff stopped at traffic light on Federal road — Whether maintenance of wayside tree on Federal roads was responsibility of Public Works Department — Whether Public Works Department had breached duty of care — Whether company appointed by Government of Malaysia to maintain Federal roads was liable — Whether damages awarded by trial judge excessive — Local Government Act 1976 s 101

On 1 May 2018, the plaintiff who was riding his motorcycle had stopped at a traffic light near the junction to the Rasah Toll on the North-South Expressway. Suddenly, a nearby tree uprooted and fell on the plaintiff which caused serious injuries on the plaintiff. The plaintiff then filed an action for negligence against the defendants for their failure to maintain the tree adjacent to the road. In the court below, the first and second defendants were the Mayor and the City Council of Seremban respectively, the third and fourth defendants were the director of the Public Works Department and the department itself ('JKR'), the fifth defendant was the Government of Malaysia, the seventh defendant was a company known as Selia Selenggara Selatan Sdn Bhd (a company appointed by the Government of Malaysia via a concession agreement to undertake maintenance of Federal roads in the southern region of the Peninsula), and lastly the sixth defendant was the seventh defendant's area manager. At the end of the trial, the sessions court found that the third to seventh defendants were liable to the plaintiff and awarded damages amounting to RM216,949 to the plaintiff. Aggrieved by the decision, the third to fifth defendants appealed against the finding of liability and the quantum of damages whereas the sixth and seventh defendants (collectively referred to as 'Selia Selenggara') appealed against the sessions court's finding that they were jointly and severally liable with the third to fifth defendants. The issues arose were in respect to: (a) whether s 101 of the Local Government Act 1976 ('the LGA') placed the responsibility for the maintenance of wayside trees on the Majlis Perbandaran Seremban even in circumstances where the road in question was a Federal road; (b) whether the maintenance of wayside trees on Federal roads was the responsibility of JKR; (c) whether JKR had breached its

duty of care; (d) causation and remoteness of damage; (e) the liability of Selia Selenggara; and (f) the quantum of damages.

Held, allowing the sixth and seventh defendants' appeal with costs of RM20,000 here and below payable by the third to fifth defendants; and dismissing the third to fifth defendants' appeal with costs of RM15,000 payable to each of the plaintiff, the first and second defendants, and the sixth and seventh defendants:

(1) The plain words of s 101 of the LGA did not appear to have any exceptions: it applied to 'any road' and 'any public road or street'. Despite this, the court was of the view that there must be logical limits placed on the meaning of 'road' in this context. For this reason, the expression 'road' and 'street' must mean those roads and streets coming within the jurisdictional limits of the local authority in question (see paras 13–14).

(2) Based on JKR's complaints log record, internal minutes and website, there was sufficient material for the court to conclude that there existed a duty of care owed by JKR to the users of Federal roads, based upon the relationship of proximity between it and the road users as well as the assumption by JKR of the responsibility to maintain such roads so that they were reasonably safe for passage. The existence of such a duty on JKR for the maintenance of Federal roads (which included the duty to maintain wayside trees so that they did not pose danger to road users), precluded the possibility that there could exist overlapping duties placed upon local authorities to maintain those same Federal roads. The court found that JKR had breached its duty of care to the plaintiff when it failed to carry out monitoring or maintenance of wayside trees on Federal roads. Further, the court was satisfied that, had proper monitoring and maintenance of the tree been undertaken by JKR, the plaintiff would not have suffered his injuries. JKR had not led any evidence to the effect that the precarious position of the tree could not have been uncovered even if they had undertaken the proper inspection (see paras 18–22 & 24).

(3) Based on the terms of the concession agreement, it was clear that at the time of the accident, Selia Selenggara was not charged with the responsibility to undertake routine maintenance works relating to the monitoring of the condition of wayside trees and the pruning of such trees. Thus, the sixth and seventh defendants' appeal against liability must be allowed, on the basis that the duty to monitor and maintain the wayside trees on Federal roads in a manner so that they did not pose a danger to road users had not been delegated by JKR or the government of Malaysia to Selia Selenggara. The court further found that learned judge had made a fundamental error in his finding that the statement of defence of the third to fifth defendants bound the sixth and seventh

defendants. This was because, the sixth and seventh defendants did not submit common defence with the third to fifth defendant (see paras 26, 28–29 & 31).

(4) The court found that all the awards granted by the trial judge were well within the range suggested by the Revised Compendium of Personal Injury Awards published by the Malaysian Bar. Further, there was no evidence and submissions to suggest that any of the awards of damages were excessive, as such, the court was of the view that the appeal against quantum of general damages ought to be dismissed (see paras 34 & 37–38).

(5) With respect to special damages, the court was of the view that it was reasonable for the court below to have concluded that the costs of the police report and sketch plan, JPJ report and police photograph had been properly incurred given that the relevant documents had been adduced for the purposes of trial. Further, the court disagreed with the submission by the senior federal counsel that certain costs of future treatment and claims for pain and suffering for future surgery ought to have been refused due to the non-production of the receipts for these items. Firstly, there were no receipts for the costs of future surgeries because these costs had not yet been incurred. Secondly, it would be contrary to logic if there were receipts in respect of claim for pain and suffering (see paras 44–47).

[Bahasa Malaysia summary

Pada 1 Mei 2018, plaintif yang sedang menunggang motosikalnya telah berhenti di lampu isyarat berhampiran simpang ke Tol Rasah di Lebuhraya Utara Selatan. Tiba-tiba sebatang pokok berhampiran tumbang dan menghempap plaintif sehingga menyebabkan plaintif cedera parah. Plaintif kemudiannya memfailkan tindakan kecuaian terhadap defendan-defendan kerana kegagalan mereka menyelenggara pokok yang bersebelahan dengan jalan tersebut. Di mahkamah bawahan, defendan pertama dan kedua masing-masing ialah Datuk Bandar dan Majlis Bandaraya Seremban, defendan ketiga dan keempat ialah pengarah Jabatan Kerja Raya dan jabatan itu sendiri ('JKR'), defendan kelima ialah Kerajaan Malaysia, defendan ketujuh ialah syarikat yang dikenali sebagai Selia Selenggara Selatan Sdn Bhd (syarikat yang dilantik oleh Kerajaan Malaysia melalui perjanjian konsesi untuk menjalankan penyelenggaraan jalan Persekutuan di wilayah selatan Semenanjung), dan terakhir defendan keenam ialah pengurus kawasan defendan ketujuh. Pada akhir perbicaraan, mahkamah sesyen mendapati defendan ketiga hingga ketujuh bertanggungjawab kepada plaintif dan memberikan ganti rugi berjumlah RM216,949 kepada plaintif. Terkilan dengan keputusan tersebut, defendan ketiga hingga kelima merayu terhadap dapatan liabiliti dan kuantum ganti rugi manakala defendan keenam dan ketujuh (secara kolektif dirujuk sebagai 'Selia Selenggara') merayu terhadap keputusan mahkamah sesyen yang memutuskan bahawa mereka bertanggungjawab secara bersesama dan

berasingan dengan defendan ketiga hingga kelima. Isu-isu yang timbul adalah berkenaan dengan: (a) sama ada s 101 Akta Kerajaan Tempatan 1976 ('AKT') meletakkan tanggungjawab ke atas Majlis Perbandaran Seremban untuk penyelenggaraan pokok tepi jalan walaupun dalam keadaan di mana jalan berkenaan adalah jalan Persekutuan; (b) sama ada penyenggaraan pokok tepi jalan di jalan Persekutuan adalah tanggungjawab JKR; (c) sama ada JKR telah melanggar kewajipan berjaga-jaganya; (d) punca dan keterpencilan kerugian; (e) liabiliti Selia Selenggara; dan (f) kuantum ganti rugi.

Diputuskan, membenarkan rayuan defendan keenam dan ketujuh dengan kos RM20,000 di sini dan di bawah dibayar oleh defendan ketiga hingga kelima, dan menolak rayuan defendan ketiga hingga kelima dengan kos RM15,000 dibayar kepada setiap plaintiff, defendan pertama dan kedua, serta defendan keenam dan ketujuh:

(1) Perkataan biasa s 101 AKT kelihatan tidak mempunyai apa-apa pengecualian: ia terpakai untuk 'mana-mana jalan' dan 'mana-mana jalan awam atau lebuh'. Walaupun begitu, mahkamah berpandangan bahawa perlu ada had logik yang diletakkan pada maksud 'jalan' dalam konteks ini. Atas sebab ini, ungkapan 'jalan' dan 'lebuh' mesti bermaksud jalan dan lebuh yang berada dalam had bidang kuasa pihak berkuasa tempatan yang berkenaan (lihat perenggan 13–14).

(2) Berdasarkan rekod log aduan, minit dalaman dan laman web JKR, terdapat bahan yang mencukupi untuk mahkamah membuat kesimpulan bahawa wujud kewajipan berjaga-jaga oleh JKR kepada pengguna jalan Persekutuan, berdasarkan hubungan kedekatan di antaranya dan pengguna jalan raya serta anggapan tanggungjawab oleh JKR untuk menyelenggara jalan tersebut supaya ia selamat untuk dilalui. Kewujudan kewajipan sedemikian ke atas JKR untuk penyelenggaraan jalan Persekutuan (termasuk kewajipan untuk menyelenggara pokok-pokok di tepi jalan supaya ia tidak mendatangkan bahaya kepada pengguna jalan raya), mengetepikan kemungkinan wujudnya tugas bertindih yang diberikan kepada pihak berkuasa tempatan untuk menyelenggara jalan-jalan Persekutuan yang sama. Mahkamah mendapati JKR telah melanggar kewajipan berjaga-jaganya ke atas plaintif apabila gagal menjalankan pemantauan atau penyelenggaraan pokok tepi jalan di jalan Persekutuan. Selanjutnya, mahkamah berpuas hati bahawa, sekiranya pemantauan dan penyelenggaraan yang sewajarnya dilakukan oleh JKR, plaintif tidak akan mengalami kecederaannya. JKR tidak membawa apa-apa keterangan yang menunjukkan bahawa keadaan pokok yang tidak kukuh tersebut tidak boleh ditemui walaupun mereka telah menjalankan pemeriksaan yang sewajarnya (lihat perenggan 18–22 & 24).

(3) Berdasarkan terma perjanjian konsesi tersebut, adalah jelas bahawa pada

masa kemalangan, Selia Selenggara tidak dipertanggungjawabkan untuk menjalankan kerja-kerja penyelenggaraan rutin berkaitan pemantauan keadaan pokok tepi jalan dan pemangkasan pokok tersebut. Oleh itu, rayuan defendan keenam dan ketujuh terhadap liabiliti mesti dibenarkan, atas dasar bahawa kewajipan untuk memantau dan menyelenggara pokok-pokok di tepi jalan di jalan Persekutuan agar ia tidak mendatangkan bahaya kepada pengguna jalan raya tidak diwakilkan oleh JKR atau kerajaan Malaysia kepada Selia Selenggara. Mahkamah seterusnya mendapati hakim yang bijaksana telah membuat kekhilafan asas dalam penemuannya bahawa pernyataan pembelaan defendan ketiga hingga kelima mengikat defendan keenam dan ketujuh. Ini kerana, defendan keenam dan ketujuh tidak mengemukakan pembelaan yang sama dengan defendan ketiga hingga kelima (lihat perenggan 26, 28–29 & 31).

(4) Mahkamah mendapati bahawa semua award yang diberikan oleh hakim bicara adalah dalam lingkungan yang dicadangkan oleh 'Revised Compendium of Personal Injury Awards' yang diterbitkan oleh Badan Peguam Malaysia. Selanjutnya, tiada keterangan dan penghujahan untuk mencadangkan bahawa mana-mana award ganti rugi adalah berlebihan, oleh itu, mahkamah berpendapat bahawa rayuan terhadap kuantum ganti rugi am mesti ditolak (lihat perenggan 34 & 37–38).

(5) Berkenaan dengan ganti rugi khas, mahkamah berpendapat adalah munasabah untuk mahkamah bawahan membuat kesimpulan bahawa kos laporan polis dan pelan lakaran, laporan JPJ dan gambar polis telah ditanggung dengan sewajarnya memandangkan dokumen yang berkaitan telah dikemukakan untuk tujuan perbicaraan. Selanjutnya, mahkamah tidak bersetuju dengan hujahan oleh peguam kanan persekutuan bahawa kos tertentu rawatan masa depan dan tuntutan untuk kesakitan dan penderitaan untuk pembedahan masa depan sepatutnya ditolak kerana resit untuk item-item ini tidak dikemukakan. Pertama, tiada resit untuk kos pembedahan masa depan kerana kos ini belum lagi ditanggung. Kedua, adalah bertentangan dengan logik jika terdapat resit berkenaan tuntutan untuk kesakitan dan penderitaan (lihat perenggan 44–47).]

Cases referred to

Ahmad Jaafar bin Abdul Latiff v Dato' Bandar Kuala Lumpur [2014] MLJU 1913; [2014] 9 CLJ 861, FC (refd)
Jamiah bt Holam v Koon Yin [1983] 1 MLJ 103 (refd)

Legislation referred to

Federal Roads Act 1959
Local Government Act 1976 ss 101, 101(b)

A *Jaqdesh Singh Johal (Mohana Krishnan) in Appeal No NA-12B-9–04 of 2022 for the appellants.*

Amalina bt Zainal Mokhtar (Senior Federal Counsel, Attorney General's Chambers) in Appeal No NA-12B-10–04 of 2022 for the appellants.

B *Vimalarani Sothiratnam (V Kathigasu) in Appeal Nos NA-12B-9-04 of 2022 and NA-12B-10–04 of 2022 for the first respondent.*

Aisha Jothilingam (with Ganesalingam Vijayaratnam) (Ganesalingam Vijyaratnam & Aisha Jothilingam) in Appeal Nos NA-12B-9–04 of 2022 and NA-12B-10–04 of 2022 for the second and third respondents.

C **Azizul Azmi Adnan J:**

INTRODUCTION

D **[1]** The plaintiff in this case, En Iqmal Izzuddeen bin Mohd Rosthy was riding his motorcycle on Jalan Rasah on 1 May 2018. He stopped at a traffic light near the junction to the Rasah Toll on the North-South Expressway. Without warning, a nearby tree uprooted and fell on the plaintiff. He suffered serious injuries, including multiple fractures to his arms, ribs and jaw. He was just 18 years old at the time of the accident.

E

[2] The plaintiff sued the defendants in the court below for negligence and breach of statutory duties for their contended failure to (among others) maintain the trees adjacent to the road.

F

[3] The first and second defendants at the sessions court were the Mayor and the City Council of Seremban respectively. The third and fourth defendants were the director of the Public Works Department (Jabatan Kerja Raya or JKR) and the department itself. The fifth defendant was Government of Malaysia, whom the plaintiff sought to make liable on the principle of vicarious liability. The seventh defendant was a company known as Selia Selenggara Selatan Sdn Bhd, a company that has been awarded by the Government of Malaysia with a concession to undertake maintenance of Federal roads in the southern region of the Peninsula. The sixth defendant was its area manager.

G

H

[4] After a trial of the action, the sessions court found the third to seventh defendants liable to the plaintiff, and awarded damages amounting to RM216,949.

I **[5]** The sixth and seventh defendants appealed against the finding that they were jointly and severally liable with the third to fifth defendants to the plaintiff.

[6] The third to fifth defendants also appealed against the finding of liability,

as well as on the quantum of damages that was awarded to the plaintiffs.

[7] These appeals were heard together. I allow the sixth and seventh defendants' appeal and dismiss the third to fifth defendants' appeal. The reasons are explained below. The parties are referred to in this judgment as they were before the court below.

THE LIABILITY OF JKR AND THE OTHER GOVERNMENT DEFENDANTS

[8] The learned senior federal counsel in this case argued that:

(a) JKR bore no responsibility to maintain trees, and that its responsibility was limited to the proper maintenance of Federal roads. Thus, argued counsel, it was only if trees blocked roads or interfered with road-related infrastructure would there arise a duty on JKR to clear the roads; and

(b) in accordance with s 101(b) of the Local Government Act 1976, the responsibility for the maintenance of wayside trees lay with the Majlis Perbandaran Seremban (now the Majlis Bandaraya Seremban).

[9] These two points are addressed in reverse order in the following paragraphs.

The Local Government Act 1976

[10] Section 101 of the Local Government Act 1976 provides as follows:

> In addition to any other powers conferred upon it by this Act or by any other written law a local authority shall have power to do all or any of the following things, namely —
>
> ...
>
> (b) to plant, trim or remove trees;
>
> ...
>
> (cc) to require the owner or occupier of any premises to do any of the following acts —
>
> (i) to remove, lower or trim to the satisfaction of the local authority any tree, shrub or hedge overhanging or interfering in any way with the traffic on any road or street or with any wires or works of the local authority or which in the opinion of the local authority is likely to endanger the public safety or convenience and in the event of any tree situated in private premises falling across any public road or street the local authority may remove the fallen tree and the expenses incurred shall be charged on and recoverable from the owner or occupier thereof;

(ii) to remove any dilapidated fence or structure abutting upon any public place and if such owner or occupier fails to comply with any such request any authorised officer of the local authority may enter upon the said premises and carry out such work and the provisions of section 115 shall apply to the expenses incurred thereby;

[11] Now, even though s 101, by its plain words, purports to confer powers upon local authorities, the Federal Court in *Ahmad Jaafar bin Abdul Latiff v Dato' Bandar Kuala Lumpur* [2014] MLJU 1913; [2014] 9 CLJ 861 unanimously held that the effect of s 101 was to impose upon local authorities a statutory duty to remove any tree that is likely to cause danger to public safety.

[12] Now, it is not in dispute that the road on which the accident had occurred was a Federal road, *gazetted* pursuant to the Federal Roads Act 1959. The first key question for determination by this court is whether s 101 places the responsibility for the maintenance of wayside trees on the Majlis Perbandaran Seremban even in circumstances where the road in question is a Federal road.

[13] The plain words of s 101 does not appear to have any exceptions: it applies to 'any road' and 'any public road or street'. Despite this, in my considered view, there must be logical limits placed on the meaning of 'road' in this context. For instance, it cannot be that the expression road would include toll roads or expressways that are operated by toll concessionaires. The responsibility for maintaining these roads and their attendant infrastructure must be placed with the toll concessionaires or persons to whom the responsibility have been delegated.

[14] For this reason, the expression 'road' and 'street' must mean those roads and streets coming within the jurisdictional limits of the local authority in question.

[15] The vexed question still remains: does the responsibility for the maintenance of wayside trees on Federal roads lie with the Majlis Perbandaran Seremban or with JKR?

The responsibility of JKR

[16] None of the counsel before me could point to any specific legislation providing for the statutory duty of JKR to maintain Federal roads (let alone the statutory duty to maintain wayside trees on such roads). Before me, senior federal counsel nonetheless concedes that it is the duty of JKR to maintain Federal roads.

[17] In my considered opinion, if JKR bears the duty to maintain Federal roads to ensure that they may safely be used by the general public for passage, then it must also necessarily follow that JKR would owe a duty to road users to take reasonable care to ensure that such roads would be free from dangers such as, potholes, poorly marked lanes, malfunctioning traffic lights, and yes, falling trees. JKR may not be responsible for the beautification of public roads or the maintenance of the aesthetics of the trees that are planted by the roadside, but this does not detract from its duty to take reasonable care to ensure that risks to road users from falling trees are appropriately mitigated.

[18] At trial, a complaints log record belonging to JKR had been adduced, showing that JKR had assumed responsibility for removing dead and fallen trees from Federal roads (see ROA/800, 804 in encl 7 of Appeal No 9). There were also internal minutes of JKR that showed that it had awarded contracts to local companies to undertake trimming of branches of trees located on road shoulders (see ROA/768, in encl 6 of Appeal No 9). JKR's own website depicted photographs and reports of its activities relating to the removal of dead trees along the sides of roads, and the removal of coconut trees that overhung roads (see ROA/752–754, in encl 6 of Appeal No 9).

[19] There was thus sufficient material before the court for me to conclude that there existed a duty of care owed by JKR to the users of Federal roads, based upon the relationship of proximity between it and the road users as well as the assumption by JKR of the responsibility to maintain such roads so that they are reasonably safe for passage.

[20] The existence of such a duty on JKR for the maintenance of Federal roads (which included the duty to maintain wayside trees so that they do not pose danger to road users), in my considered opinion, precluded the possibility that there could exist overlapping duties placed upon local authorities to maintain those same Federal roads. As explained at para 14 ante, the scope of the duties of the local authorities must be limited to those roads coming within each of their jurisdictional limits.

Was there breach by JKR of its duty of care?

[21] Before me, senior federal counsel contended that JKR bore no responsibility to maintain wayside trees on Federal roads. Consistent with this position, JKR had not carried out any monitoring or maintenance of such trees.

[22] This failure, in my considered judgment, established beyond peradventure that JKR had breached its duty of care to the plaintiff.

Causation and remoteness of damage

[23] At paras 26 and 27 of the grounds of judgment, the trial judge made a finding of fact that there were two operating mechanisms that had caused the tree to fall: the first was the fact that the tree was top heavy, due to its large size, long branches and lush foliage. This fact was supported by the testimony of a civil defence personnel, Encik Muhammad Amin bin Abd Rahman ('PW2'), who had happened to be passing by just after the accident had happed. Second was the fact that the trunk of the tree was in poor condition. At trial, Mohammad Nashriq bin Zainal ('PW4'), the civil defence personnel who had cleared the fallen tree with a chainsaw, testified that the bole of the tree in question was old, brittle, dry and rotten. Although he was not a qualified arborist, he was able to draw on his experience in this regard. PW4 also corroborated PW2's testify that the tree was tall and lush.

[24] There was nothing in the record of appeal that would cause me to overturn this finding of fact. I was satisfied that, had proper monitoring and maintenance of the tree been undertaken by JKR, the plaintiff would not have suffered his injuries. JKR had not led any evidence to the effect that the precarious position of the tree could not have been uncovered even if they had undertaken the proper inspection.

THE LIABILITY OF SELIA SELENGGARA

[25] The sixth and seventh defendants are referred to here collectively as 'Selia Selanggara'.

[26] At the material time, Selia Selenggara had been awarded by the Government of Malaysia a concession to undertake maintenance of Federal roads in the Southern region of the Peninsula. The terms of the concession agreement specifically excluded landscaping works from the scope of routine maintenance works to be undertaken by Selia Selenggara (see ROA/1035 at encl 7 of Appeal No 9).

[27] This concession agreement took effect from 5 April 2018. Selia Selanggara had previously entered into a similar arrangement with the Government of Malaysia under a privatisation agreement. The previous arrangement required Selia Selenggara to undertake included landscaping works, which included the pruning of trees (see ROA/879 at encl 7 of Appeal No 9).

[28] It was thus clear that, at the time of the accident, Selia Selanggara was not charged with the responsibility to undertake routine maintenance works

relating to the monitoring of the condition of wayside trees and the pruning of such trees.

[29] I was thus of the view that the sixth and seventh defendants' appeal against liability must be allowed, on the basis that the duty to monitor and maintain the wayside trees on Federal roads in a manner so that they do not pose a danger to road users had not been delegated by JKR or the Government of Malaysia to Selia Selenggara.

[30] What was the basis of the trial judge's finding of liability on the part of Selia Selenggara? Paragraphs 35 and 36 of the grounds of judgment of the court below provides the answer:

> Tanggungjawab defendan ketiga hingga ketujuh.
>
> [35] Keterangan SD2 (saksi defendan ketiga, keempat dan kelima) menunjukkan bahawa kawasan tempat kejadian adalah diselenggara oleh Majlis Bandaraya Seremban iaitu defendan pertama dan kedua tetapi ini adalah bercanggah dengan penyataan pembelaan defendan ketiga, keempat dan kelima yang menyatakan tempat kejadian diselenggara oleh defendan keenam dan ketujuh (encl 75).
>
> [36] Oleh itu, defendan ketiga, keempat dan kelima adalah dilkat oleh plidingnya sendiri yang mengakui defendan keenam dan ketujuh adalah bertanggungjawab bagi penyelenggaraan di tempt kejadian. Jadi defendan ketiga, keempat, kelima, keenam dan ketujuh adalah bertanggungan 100% untuk tuntutan plaintif.

[31] From the passage above, it appears that the trial judge formed the view that the statement of defence of the third to fifth defendants (JKR and the Government of Malaysia) bound Selia Selanggara, the sixth and seventh defendants. This was a fundamental error by the judge, as the sixth and seventh defendants did not put up a common defence with the third to fifth defendants.

THE APPEAL ON QUANTUM

[32] The third to fifth defendants mounted an appeal against the quantum of damages awarded.

General damages

[33] Of the awards granted by the sessions court in respect of the eleven injuries suffered by the plaintiff, learned senior federal counsel found it fit to appeal on ten of them. They are summarised in the table below:

	Injury suffered	Sum claimed by plaintiff	Sum awarded by the sessions court	Appeal by JKR	Range suggested by the Revised Compendium
(a)	Closed comminuted midshaft right humerus fracture	RM19,750	RM15,000	RM12,000	RM12,000 to RM27,500
(b)	Closed midshaft left humerus fracture	RM19,750	RM15,000	RM12,000	RM12,000 to RM27,500
(c)	Closed left radius fracture	RM21,000	RM15,000	RM12,000	RM12,000 to RM30,000
(d)	Closed fracture of left angle of mandible	RM22,250	RM16,000	RM14,500	RM14,500 to RM30,000
(e)	Traumatic chest injury with right second, third and fourth rib fracture with pneumothorax	RM15,000	RM15,000	RM12,000	RM12,000 to RM15,000 (RM4,000 per rib)
(f)	Closed right scapula fracture	RM16,750	RM16,750	RM15,000	RM12,000 to RM21,500
(g)	Fracture of the right mandibular condyle	RM30,000	RM15,000	RM14,500	RM14,500 to RM30,000
(h)	Fracture of four teeth	RM11,000	RM10,000	RM3,000	RM3,000 to RM12,000
(i)	Loss of tooth	RM3,250	RM3,000	NA	RM3,000 to RM3,500
(j)	Scars on shoulder and arm	RM18,000	RM15,000	RM5,000	RM12,000 to RM24,000

	Injury suffered	Sum claimed by plaintiff	Sum awarded by the sessions court	Appeal by JKR	Range suggested by the Revised Compendium
(k)	Transverse process T1 to T4 fracture	RM128,000	RM32,000	RM22,000	RM22,000 to RM42,000

[34] It can be seen that all the awards granted by the trial judge were well within the range suggested by the *Revised Compendium of Personal Injury Awards* published by the Malaysian Bar.

[35] In the submissions of learned senior federal counsel, it was not explained how each of the individual awards where manifestly excessive or unreasonable in the circumstances.

[36] It is apposite at this stage to remind ourselves of the principles to be applied in an appeal on the quantum of damages awarded for personal injury claims, mindful that determinations on quantum are findings of fact. In the case of *Jamiah bt Holam v Koon Yin* [1983] 1 MLJ 103, Hashim Yeop A Sani J held as follows:

> As regards the appeal on quantum it is an established approach for a court exercising appellate jurisdiction to adopt that in an appeal on quantum unless it can be shown to the satisfaction of the Appellate Court that the award is extremely inconsistent with the discernible trend or that the award was made on some misapprehension of facts or on some erroneous assumption of law or fact, the Appellate Court should not interfere. Here there was no evidence to show that the magistrate went beyond the limits of decided authorities in awarding general damages.

[37] In the present case, not only was there no evidence to suggest that any of the awards of damages were excessive, there was not even any credible submissions advanced as to why this was the case. All there was, as can be seen from the table set out in para 33 ante, was the reproduction of the lowest figure in the range suggested in the Compendium in eight out of the ten awards being challenged.

[38] I am accordingly of the view that the appeal against the quantum of general damages ought to be dismissed.

[39] It is undeniable that parties have a right to appeal against the determination of the court of first instance. However, parties would be well advised not to mount appeals in plainly and obviously unmeritorious cases,

particularly where the appeal relates to findings of fact. It is never the case that the more numerous the grounds of appeal, the more likely that the court sitting in appeal will find favour with one of those grounds, without a convincing (or even reasonable) argument being advanced in support of the grounds of appeal. Spray and pray never pays.

Special damages

[40] It was advanced for the third to fifth defendants that the claims for special damages ought to be dismissed on account of the fact that no proof was adduced at trial to establish the sums claimed.

[41] The learned trial judge awarded the following as special damages:

(a) costs of the police report and sketch plan: RM8;

(b) cost of JPJ report: RM10; and

(c) cost of police photographs: RM75.

[42] It was argued by senior federal counsel that these claims ought to have been refused by the learned sessions judge because none of them were supported by receipts.

[43] It was not in dispute that copies of the police and JPJ reports and of the sketch plan were exhibited at trial. So were the police photographs. Furthermore, the plaintiff was not challenged in cross-examination by senior federal counsel that these costs had not been incurred.

[44] In my considered view, it was entirely reasonable for the court below to have concluded that these costs had been properly incurred given that the relevant documents had been adduced for the purposes of trial.

[45] It was further advanced by senior federal counsel that certain costs of future treatment and claims for pain and suffering for future surgery ought to have been refused, on account of the purported failure by the plaintiff to produce receipts for these items of claim.

[46] I found these submissions perplexing. Of course there were no receipts for the costs of future surgeries, because these costs have not yet been incurred. Nonetheless, there was evidence led by the relevant physicians regarding what these future costs might be. For instance, the attending maxillofacial surgeon, Professor Dr Ngeow Wei Cheong from the University of Malaya Special Centre, provided a report (see p ROA/529 (encl 6) in Appeal No 9) in which he estimated the costs of the future dental-related surgeries to be RM66,700. The

learned judge only awarded one-third of this amount (RM22,233) on the basis that these were the costs of private care.

[47] The learned judge also awarded RM5,000 for future pain and suffering arising from each of future orthopaedic surgeries and future maxillofacial surgeries. As these were awards for pain and suffering, it stood to reason that there would be no receipts issued in respect of them. To suggest otherwise was quite contrary to logic.

CONCLUSION

[48] For the reasons explained in this judgment:

(a) the sixth and seventh defendants' appeal against liability in Appeal No NA-12B-9–04 of 2022 is allowed with costs of RM20,000 here and below payable by the third to fifth defendants; and

(b) the third to fifth defendants' appeal in Appeal No NA-12B-10–04 of 2022 on both liability and quantum is dismissed with costs of RM15,000 payable to each of:

(i) the plaintiff;

(ii) the first and second defendants; and

(iii) the sixth and seventh defendants.

Sixth and seventh defendants' appeal allowed with costs of RM20,000 here and below payable by third to fifth defendants; third to fifth defendants' appeal dismissed with costs of RM15,000 payable to each of plaintiff, first and second defendants, and sixth and seventh defendants.

Reported by Dzulqarnain Ab Fatar